

[Waiver 1993-1]
W-93-44

MEMORANDUM

January 27, 1993

TO: Sergeant James A. Fenner, Jr.
Supervisor, Wheaton Glenmont District
Montgomery County Police Department

FROM: Jay L. Cohen, Chair
Montgomery County Ethics Commission

RE: Request for Waiver

The Ethics Commission has reviewed your request for a waiver dated November 13, 1992. Based on this request, the Ethics Commission understands the facts as follows:

You are a Sergeant in the Montgomery County Police Department. Prior to September 1990, you were assigned to the Silver Spring District as a patrol supervisor. In September 1990, you were reassigned to assist the Recruitment Section located in Police Headquarters in Rockville. In February 1991, the Department reassigned most of the personnel in the Recruitment Section in Rockville to various other assignments. Even though you wanted to return to Silver Spring, the only Sergeant position available was in the Wheaton Glenmont District where you were, in fact, assigned.

For the past five years, you have been engaged in outside security related employment at the Aspen Hill Shopping Center. You have indicated that you accepted the transfer to the Wheaton Glenmont District subject to an express understanding with the Chief of the Patrol Division that you could continue your outside employment at the Aspen Hill Shopping Center.

Section 4.7 of the Ethics Commission Regulations on outside employment states:

Sworn County police officers and civilian police employees may not hold outside employment involving security duties in the district to which they are assigned as County employees, except as permitted by special waiver granted by the Ethics Commission on a case by case basis. (Emphasis in original).

The Aspen Hill Shopping Center is located in the Wheaton Glenmont District. You have asked for a waiver to continue your outside security related work at the Aspen Hill Shopping Center.

Section 19A-8 authorizes the Ethics Commission to grant a waiver from outside employment regulations if the Commission finds any one of the following:¹

¹ Unless otherwise indicated, section references are to the Montgomery County Code (1984).

1. The waiver is needed to ensure that competent services to the County are timely and available;
2. Failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or
3. The proposed employment is not likely to create an actual conflict of interest.

Section 19A-8(d) expressly authorizes the Commission to impose appropriate conditions to fulfill the purposes of the ethics law when it grants a waiver.

In applying these criteria to this waiver request, the Ethics Commission finds the following factors persuasive:

1. You were transferred to the Wheaton Glenmont District even though you expressed a desire to be transferred to the Silver Spring District.
2. You held your security related employment at the Aspen Hill Shopping Center prior to your transfer to the Wheaton Glenmont District.
3. You were assured by police management that you would be able to continue your security related employment at the Aspen Hill Shopping Center even though the shopping center was located in the District to which you were assigned.²

Under these specific circumstances, the Ethics Commission believes that it would be unfair to require you to immediately cease your outside security related employment at the Aspen Hill Shopping Center. The Commission believes that such precipitous action on the part of the Commission might reduce the ability of the County to retain highly qualified public employees.

Accordingly, the Ethics Commission grants you a waiver to continue your security related employment at the Aspen Hill Shopping Center until June 11, 1993. This grace period is intended to allow you an opportunity to either seek other employment or obtain a transfer to another Police District. After June 11, 1993, you must cease your security related employment at the Aspen Hill Shopping Center unless you have been assigned to a District other than the Wheaton Glenmont District. You must inform the Commission how this matter is resolved.

If you have any questions regarding this waiver, please contact the Ethics Commission.

² This assurance was apparently given even though it is clear that the Police Department did not have the authority to make such an assurance. Only the Ethics Commission has the authority to grant a waiver from the prohibition against working in a security related job in the district to which an officer is assigned. Section 19A-8 and Section 4.7 of the Ethics Commission Regulations on outside employment.